

ROY COOPER
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MICHAEL S. REGAN
Secretary
LINDA CULPEPPER
Director



November 14, 2019

CERTIFIED MAIL 7018 1830 0001 8037 0267
RETURN RECEIPT REQUESTED

Steven Drew, Water Resources Director
City of Greensboro
2602 S Elm-Eugene St
Greensboro, NC 27406-9787

Subject: **NOTICE OF VIOLATION (NOV-2019-PC-0728) & Intent to Assess CIVIL PENALTIES**
T.Z. Osborne WWTP
NPDES Permit NC0047384
Guilford County

Dear Mr. Drew:

The North Carolina Division of Water Resources has reviewed data submitted on your Discharge Monitoring Report (DMR) dated August 2019. The data indicates that on August 7, 2019, the City of Greensboro had a discharge of 1,4 Dioxane of 957.5 ug/L. This discharge represents a violation of North Carolina water quality standards as well as conditions of NPDES WW Permit No. NC0047384. The violations are enumerated below.

Violations of North Carolina Water Quality Standards

Based on the review of the provided DMR data, there was a violation of North Carolina regulation 15A NCAC 02B .0211(12), which states:

“Oils, deleterious substances, colored, or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses.”

Violations of NPDES Permit NC0047384 Conditions

Review of the discharge data for August 7, 2019 also indicates a violation of NPDES permit NC0047384 Part II Section E, condition (9)(a) and Part IV, Section C(2)(c) listed below.



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1650 Mail Service Center | Raleigh, North Carolina 27699-1650
919.707.9000

Part II, Section E(9)(a), Noncompliance Notification

The Permittee shall report by telephone to either the central office or the appropriate regional office of the Division as soon as possible, but in no case more than 24 hours or on the next working day following the occurrence or first knowledge of the occurrence of any of the following:

a. Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester; the known passage of a slug of hazardous substance through the facility; or any other unusual circumstances.

Part IV, Section C(2)(c), Municipal Control of Pollutants from Industrial Users

The Permittee shall investigate the source of all discharges into the POTW, including slug loads and other unusual discharges, which have the potential to adversely impact the Permittee's Pretreatment Program and/or the operation of the POTW.

The Permittee shall report such discharges into the POTW to the Director or the appropriate Regional Office. Any information shall be provided orally within 24 hours from the time the Permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the discharge; the investigation into possible sources; the period of the discharge, including exact dates and times; if the discharge has not ceased, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance

This Notice of Violation/Intent to Issue Civil Penalty is being issued for the noted violations of North Carolina water quality standards (15A NCAC 2B .0100 and .0200) and the facility's NPDES Permit (NC0047384). Pursuant to G.S. 143-215.6A, a civil penalty of not more than twenty-five thousand dollars (\$25,000.00) may be assessed against any person who:

(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215, or

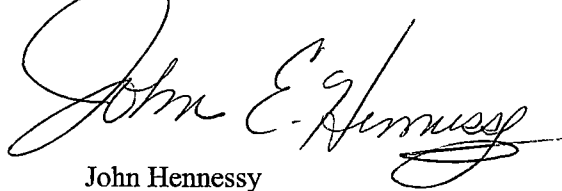
(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.

If you wish to provide additional information regarding the noted violations, request technical assistance, or discuss overall compliance please respond in writing within thirty 30 calendar days after receipt of this Notice. A review of your response will be considered along with any additional information provided when determining whether a civil penalty may be assessed.

Remedial actions should have already been taken to correct this problem and prevent further occurrences in the future. The Division of Water Resources may pursue enforcement action for this and any additional violations of State law.

If you should have any questions, please do not hesitate to contact me at 919-707-3615.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Hennessy". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

John Hennessy
Compliance and Expedited Permitting Supervisor

cc: Lon Snider, WSRO
Jenny Graznak, WSRO

Poyner Spruill^{LLP}

H. Glenn Dunn
 Partner
 D: 919 783.2842
 F: 919 783.1075
 gdunn@poynerspruill.com

December 19, 2019

VIA EMAIL

John Hennessy
 Compliance and Expedited Permitting Supervisor
 N.C. Department of Environmental Quality
 1650 Mail Service Center
 Raleigh NC 27699-1650

RECEIVED

JAN - 3 2020

NCDEQ/DWR/NPDES

RE: Notice of Violation (NOV-2019-PC-0728) & Intent to Assess Civil Penalties
 T.Z Osborne WWTP
 NPDES Permit NC0047384
 Guilford County

Dear Mr. Hennessy:

I am writing this letter as legal counsel for the City of Greensboro to respond to the Notice of Violation sent to the City by the Division of Water Resources (the "Division") dated November 14, 2019 (the "NOV"), a copy of which is attached to this response. The City is of the opinion that the three incidents described in the NOV do not constitute a violation of a water quality standard or of the City's NPDES permit (the "Permit"). Nevertheless, the City wants to state at the outset of this response that it does not want to take an adversarial approach in this matter, but rather wishes to work together on a mutually acceptable approach to continuing the City's ongoing efforts to reduce the 1,4 dioxane discharged to, and subsequently from, the T.Z. Osborne WWTP (the "WWTP").

The NOV alleges there was a violation of North Carolina regulation 15A NCAC 02B .0211(12), which states:

"Oils, deleterious substances, colored, or other wastes, only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses."

The City believes it cannot be liable for violation of the cited narrative water quality standard ("WQS") because the standard is not a Permit condition or requirement. The Division clearly contemplated whether to limit 1,4 dioxane when the Permit was issued in 2014, but chose not to include a limit, and instead included a "reopener" in case it wanted to add such a limit in the future. Importantly, the Division also did not include in the Permit the narrative standard that the NOV alleges the City has violated. Because neither a specific 1,4 dioxane limit or the narrative standard are included in the Permit, the City is "shielded" from a violation of the Permit and/or the standard.

This "permit shield" is not merely a legal technicality that the City is invoking, but is based on fundamental fairness and principles of due process. A numerical limit could have been included in the Permit, but there was not adequate information at the time the Permit was issued on which to base a reasonable scientifically based limit. Likewise, the narrative standard could have been included but was

John Hennessy
December 19, 2019
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not, presumably for the same reason. Consequently, the Permit provides the City no notice of what is required for compliance regarding 1,4 dioxane, and application of the narrative standard on which the violations are based, has in effect has been applied "after the fact".

The City believes neither of the additional two alleged violations of the Permit regarding reporting are valid because, as explained above, there is no numerical limit in the Permit, nor is the narrative standard that the City allegedly violated stated in the Permit. Consequently, 1,4 dioxane is unregulated by the Permit and there is no basis for requiring compliance with the Permit conditions which involve reporting and/or investigating unusual discharges of 1,4 dioxane from or to the WWTP. Since there is no limit or standard in the Permit, the City would not be on notice as to what incidents would trigger such reports and investigations.

Although the City disagrees with the alleged violations, it shares the Division's concerns regarding the effects of discharges of 1,4 dioxane into surface waters of the State. The City has for several years worked proactively to identify industries that discharge 1,4 dioxane to its WWTP and has worked with them to achieve significant reductions. The City has already indicated that it wants to work with the Division to develop a mutually acceptable settlement order establishing measures to be taken to further identify sources and reduce the 1,4 dioxane discharged to and from the WWTP and a schedule for implementing those measures. Such a settlement order should not only continue to reduce the T.Z. Osborne WWTP's 1,4 dioxane discharge, but may assist the Division in developing technically based, reasonable and achievable goals for 1,4 dioxane discharges.

Greensboro representatives look forward to meeting with you and other Division representatives to discuss this response and the possibility of resolving the alleged violations by means of a Special Order by Consent.

Very truly yours,



H. Glenn Dunn